No. 318. 86

Motion to advance

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JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1900.

LOUIS AUGUSTE MARANDE, JULES EMILE ROEDERER and PAUL LEON ROEDERER,
Plaintiffs in Error,

against

THE TEXAS AND PACIFIC RAILWAY COMPANY,
Defendant in Error.

No. 318.

MOTION TO ADVANCE.

And now come the plaintiffs in error and the defendant in error, and jointly move this Honorable Court to advance this cause upon the docket so that the same may be heard directly after the hearing of the cases of *Texas & Pacific Railway Company against Reiss*, No. 307, and *Texas & Pacific Railway Company against Callendar*, No. 308.

The reasons for this motion and application are as follows:

This action is brought against the Texas and Pacific Railway Company to recover damages for loss to cotton by fire occurring at the dock of this de-

fendant at Westwego, in the State of Louisiana, on November 12, 1894, and is one of thirty-two actions, including the Reiss and Callendar cases, now pending against this defendant in error to recover damages for loss of cotton by the same fire. The facts are the same in each of the cases.

Upon the trial of the Reiss case the railway company contended that the cotton in suit was awaiting further conveyance at the time of its destruction, and that by reason of a clause in the bill of lading making the liability of the carrier that of a warehouseman only, while the cotton was awaiting further conveyance, it was only liable for negligence. The trial court, however, held that the cotton was not awaiting further conveyance at the time of the fire, and, the bill of lading containing no exemption from loss by fire, that the railway company was liable as an insurer for the loss, and thereupon directed a verdict for the plaintiffs, the shippers. This action of the Circuit Court was affirmed by the Circuit Court of Appeals, and from the judgment of affirmance an appeal was taken to this Court.

Upon the trial of the Callendar case the railway company contended that the cotton had been delivered, or that in any event it was awaiting further conveyance at the time of the loss, and, the bill of lading containing an "awaiting further conveyance" clause similar to that in the Reiss case, that it was only liable, if at all, for negligence. The trial court, however, held that no delivery had been made and that, by reason of a special clause in the bill of lading expressly making the carrier liable as at common law for loss or damage to cotton by fire, the "awaiting further conveyance" clause did not operate to modify defendant's common law liability, and thereupon directed a verdict for the plaintiffs. This action of the Circuit Court was also affirmed by the Circuit Court of Appeals, and from the judgment of affirmance an appeal was taken to this Court.

In this case the bill of lading contained an express exemption from loss by fire and upon the trial the plaintiffs, the shippers, contended, as they had also contended in each of the other cases, (1) that the railway company had deviated from the usual and customary method of transportation and that, by reason thereof, it had forfeited all of the exemptions in the bill of lading contained, and (2) that the railway company was negligent.

At the conclusion of the plaintiff's case the trial court held that the railway company had not deviated from the usual and customary method of transportation, and also that no negligence had been shown, and thereupon directed a verdict for the railway company. This action of the Circuit Court was affirmed by the Circuit Court of Appeals and from the judgment of affirmance this appeal was taken to this Court.

All three of these cases arose out of the same fire and the facts are the same in each one.

Certain questions, however, are common to all of the cases, the decision of which by this Court in any one of the cases would be decisive of the others, as for instance, should this Court decide in the Callender case that a delivery had been made by the railway company, such decision would be conclusive of both the others, the facts being the same; again, should the Court decide in the Marande case that defendant had deviated from the usual and customary method of transportation and thereby forfeited the benefit of the exemptions in the bill of lading, such decision would be controlling in both the others, or should this Court in the Marande case decide that no deviation had been made, but that the plaintiffs had offered sufficient evidence to entitle them to go to the jury on the question of negligence such decision would control the action of the trial court on a new trial of the Reiss case should this Court reverse the judgment in that case and send it back for a new trial.

The grounds upon which the trial court and the

Circuit Court of Appeals based their decisions in these cases render it impracticable to argue all of the cases together as one case, but because the facts in each case are the same and because certain important questions, any one of which may be decisive of all are common to each of the cases, the counsel for both parties, in all the cases, respectfully suggest that it is proper that this case should be advanced and be heard after the hearings in cases Nos. 307 and 308, in order that the whole nature of this series of cases, and all of the questions common not only to these cases but to the remaining twenty-nine cases (none of which can be tried until the determination of these appeals by this Court) should be before this Court for consideration, at the same time.

Dated, March 14, 1901.

Respectfully submitted,

TREADWELL CLEVELAND,
Counsel for the Plaintiffs in Error.

RUSH TAGGART,
Counsel for the Defendants in Error.